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STATE FOR EUR/WE AND S/GCI

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TAGS: [PREL](#) [PGOV](#) [PREF](#) [PTER](#) [BE](#)
SUBJECT: S/GC SPECIAL ENVOY FRIED SEEKS WAY FORWARD ON
TUNISIAN DETAINEES WITH BELGIUM

Classified By: Acting Deputy Chief of Mission Richard Eason, reason 1.4
(b) and (d).

11. (C) Summary: Daniel Fried, U.S. Special Envoy for Guantanamo Closure, met on January 27 with Stefaan De Clerck, Minister of Justice of Belgium and (separately) with Dirk Wouters, Chief of Staff to Minister of Foreign Affairs Steven Vanackere. S/E Fried was joined by Matt Olsen, the Director of the Guantanamo Detainee Review Task Force. Deputy Chief of Staff Marc Van Den Reeck attended the Wouters meeting on the Belgian side. In both meetings, Fried briefed on his latest discussions with European Union (EU) counterparts regarding Guantanamo. Fried also sought to identify acceptable ways for the Belgian government to receive two Tunisian detainees who were convicted in 2004 (in absentia) by Belgian courts of terrorism-related crimes. In the primary meeting on this issue, De Clerck protested that his ministry could not request the extradition of those two detainees given the responsibility it would impose on him for any national security threat posed by those individuals. In the same line of reasoning, De Clerck allowed that if the two Tunisians were present in Belgium by some other means, the Ministry of Justice would seek their arrest and prosecution in accordance with its duty to address the prior conviction. S/E Fried accepted this as a way forward and offered that he understood from the defense counsel for both individuals that each would agree to the imposition of various security measures if allowed to arrive in Belgium. In the later meeting at the Ministry of Foreign Affairs, Van Den Reeck complained that the two posed a high security threat but that their transfer to Belgium would result in a re-trial and likely acquittal. Further to that reasoning, Van Den Reeck contended that Belgium would have no legal basis under the criminal justice system to monitor or control the Tunisians if they were released immediately or after serving a sentence, despite any voluntary security measures. At one point, Van Den Reeck suggested the two simply be "sent to Thomson" for indefinite detention. End Summary.

EU DISCUSSIONS

12. (SBU) S/E Fried reported on his other meetings in Brussels with EU Parliamentarians and officials to update them on the progress the United States has had in closing Guantanamo. Fried specifically noted that he had thanked Belgium among those governments which had resettled detainees (Belgium resettled a Syrian detainee in October 2009). Fried informed of his request to the EU and its Members for renewed assistance to close Guantanamo, including for countries that have not taken any detainees to do so while also asking countries that have already taken detainees to consider one-two more. Additionally, Fried and Olsen said that the review of the 240 Guantanamo detainees (now at 192 remaining) has been completed. There are still difficulties ahead,

especially in addressing the large Yemeni population remaining at Guantanamo, but that there is still progress, not least of which includes the help shown by European governments to resettle detainees. (The list of European countries that have resettled detainees is currently at seven: France, Portugal, Ireland, Belgium, Hungary, Slovakia, and Switzerland; Italy also received two detainees, but for prosecution on criminal charges in Italian courts. Spain, Bulgaria and Latvia have (or, in the case of Latvia, will shortly) publicly announced their intention to resettle detainees in the near term.)

BELGIUM,S RESETTLED DETAINEE

13. (C) De Clerck appreciated Fried,s public thanks for Belgium,s reception of a Guantanamo detainee, noting (accurately) that it was more than what some others in Europe had done. De Clerck called the resettlement of the individual difficult, but manageable. In the later meeting at the MFA, Van den Reeck stated that he coordinates an interagency monitoring group that addresses the former detainee,s progress, especially in regard to security measures in place to prevent the individual,s re-engagement. Van den Reeck said that this is primarily done as a contingency because the individual,s resettlement is progressing well and without security concern.

NO OPTION BUT BELGIUM FOR THE TUNISIANS

14. (C) Fried explained to De Clerck that in the cases of Adel Hakeemy and Hisham Sliti, two Tunisians whose cases had been TUNISIAN DETAINEES WITH BELGIUM

discussed with the Belgians, their convictions in absentia by Belgium make it impossible to resettle them in any other country. Additionally, repatriation to Tunisia is not possible at this time as it is more likely than not that they would be mistreated if returned there. Fried eminded De Clerck of a Memorandum of Understanding (MOU) that had been provided to the MOJ as an alternative to a formal extradition request by Belgium. He noted that this type of arrangement was done in the case of the two Tunisians transferred to Italy for prosecution. Fried also conveyed a new offer extended by the defense counsel for both Tunisians, that those individuals would be willing to face trial in Belgium and would additionally accede to voluntary and extended security measures in order to facilitate their transfer.

15. (C) De Clerck opened by adamantly stating extradition was not an option for Belgium. He explained that in balancing an extradition request, he had to consider not only the rights of the convicted individuals to an in-person trial (they were convicted in absentia), but also the national security of Belgium. Accordingly, given the profile of the two Tunisians, his answer would have to be "no" to requesting an extradition. Further, in addressing S/E Fried,s suggested MOU arrangement, De Clerck dismissed it as a "fake" extradition and not an acceptable basis for moving forward. In both cases, De Clerck said, he would be responsible for any bad act taken by those two individuals after their transfer and eventual release into Belgium. Elaborating, De Clerck assessed that although each had been sentenced to three to four years of prison in 2004, when transferred and re-tried -- as would be their right -- both would "be on the street" again soon after their transfer. He mentioned that the Belgian appellate court addressing their original conviction will hold a hearing sometime in February, though it may be postponed and was already postponed twice before. The attorneys in Belgium for the two Tunisians are likewise heavily pressuring the MOJ to extradite the individuals to Belgium to appear at that hearing. If the two were present in Belgium by some means other than an extradition, then of course the MOJ would do its duty and provide them their right to an in-person trial. S/E Fried said that the United States could be flexible in how it might arrange the transfer of the two Tunisians, but that the Belgian government would have to

allow for the transfer. The U.S. would not simply put them on a commercial flight to Brussels.

¶6. (C) De Clerck repeated that even if they are convicted and serve time, the Tunisians would eventually have to be released. It is not good news to the Belgian public that the GOB is "importing" such prisoners. De Clerck then introduced that both Tunisians were formerly resident in Italy and asked why the United States was not approaching Italy to take them.

Fried responded that the Italians have not expressed an interest in either detainee and more to the point, Belgium had convicted them and must therefore take responsibility. In the later meeting at the MFA, Van den Reeck informed that both Tunisians were also convicted in Italy, but that they had been "graced". Throwing this out as another obstacle to Belgium receiving them, Van den Reeck claimed that while Belgium could not "grace" the men, it would have to clear up with the Itthere was a prosecut or whether their formerQan issue for their transQ Embassy Rome informs eneral amnesty in Ityears sentences for Qs.)

¶7. (C) De Clerck Qmeeting by highlighting: 1) working with the detainees, lawyers to remove the extradition rQquest and propose voluntary security measuresrequired for any transfer; and 2) resolving a.y complications associated with the former residency of both individuals in Italy. Fundamentally, De Clerck reiterated, Belgium does not ant to be seen as officially saying that it wQnts the Tunisians. Fried stressed that the USG cannot send them to Belgium without some arragement, but that the exact shape this takes iQ open for discussion.

STRONG PUSH-BACK FRM THE MFA

8 (C) In his meeting with Wouters and Van Den Reeck, S/E Fried repeated the substance of his dicussion with De Clerck, about which both had Qlready apparently been briefed. Van Den RQeck was quick to take control of the conversation from Wouters and to list why the transfer of the Tunisians to Belgium is not a viable option. First, he claimed that

because both individuals had been sentenced in Belgium to less time than they have already served in Guantanamo, he feared a Belgian court would release them immediately, either upon arrival or even if convicted in a new trial. On the proposed solution of voluntary security measures, Van den Reeck claimed that a Belgian court would not honor them and that once released by the court, the two could simply ignore or dissolve the agreement. Embassy Brussels A/PolCouns Kiene suggested in response that the issue not be handled as a criminal matter, but as an immigration matter, thereby allowing for the imposition of voluntary measures. While Van den Reeck conceded that this might be possible, he viewed this as an unsatisfactory solution due to the fact that Belgian security services consider these two a high security risk and likewise there would not be the option of residency in Belgium, only prolonged immigration detention. He questioned aloud whether a removal proceeding would be initiated to return them to Tunisia after being placed in immigration detention and stated that even Amnesty International had determined there is no path to integration for these individuals in Belgium.

¶9. (C) Further speaking to the second prong of his opposition to the transfer, Van den Reeck claimed that Belgian services had determined both men are highly dangerous and connected to terrorist networks. Likewise, Belgium could not treat them as they did with the previously resettled Syrian detainee. He wondered whether it might be better for them at Thomson (the proposed U.S. detention facility), "where they belong." Finally, Wouters added that the already resettled Syrian detainee had specifically mentioned these two Tunisians as a threat to his own personal security. S/E Fried noted that the U.S. assessment of both Tunisians was that their threat could be mitigated with appropriate security measures and

emphasized that there was no other resettlement possibility for them given the Belgian conviction.

COMMENT

¶10. (C) The Belgians are clearly digging in to resist the transfer of the Tunisians to Belgium. Despite the 2004 convictions, De Clerck will not accede to an extradition or quasi-extradition proceeding as it would make him the responsible party for their transfer to Belgium at a time when he's already facing public pressure to make Belgium safer. In the MFA, there is clear hostility to the idea of either Tunisian resettling in Belgium outside of a prison. In short, even with an agreement by the Tunisians to a list of security measures, it will be difficult to implement an arrangement to transfer the men, as neither the MOJ or MFA will take responsibility for doing so.

¶11. (U) S/GC Special Envoy Fried has cleared this telegram.

GUTMAN
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